Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	**)**	
	)	
FCC Implementation Of Executive Orders	**)**	**GN Docket 25-133**
("In re: Delete, Delta, Delete")	**)**	

COMMENTS OF THE MILE ONE BROADBAND CONSORTIUM
FOR THE COMMISSION'S PUBLIC NOTICE IN GN DOCKET 25-133

TABLE OF CONTENTS

EXECUTIVE SUMMARY……..3

I. GUIDING PRINCIPLES FOR REVIEW IN GN DOCKET 25-133…….……4

II. MAJOR POLICY QUESTIONS FOR FCC PRIMARY JURISDICTION…….5

III. ECONOMIC ASPECTS OF TRANSFORMATIVE INNOVATION…….....12

IV. TRANSFORMATIVE INNOVATION WITH NEUTRAL METHODS.....…….18

V. USE CASES FOR A CAP AND TRADE MARKET TRIAL PROJECT ……..23

A. Use Case #1: Testing Of A "Cap And Trade" Cloud For The CBRS/ ITU Band 48 (3.5 GHz).....23

B. Use Case #2: Testing Of A "Drag And Drop" Model For The Deployment Of Modular Micro-Data Centers For ORAN Mesh Network Architectures…….....25

C. Use Case #3: Testing Of A Group Shared Access Protocol For "Plug And Provide" OVS-Based Distribution Of Internet Services Under 47 U.S.C. 230...26

VI. RECOMMENDATIONS FOR DEREGULATORY OPTIMIZATION……...…….…...26

A. Deregulate The Anti-DEI Ban With A "Smart DEI" Taxonomy To Optimize Infrastructure Deployments With Maximum Holistic Efficiency……..……..…26

B. Refarm The "Open Video Service" Regime To Promote "Open Radio Access Network" Deployments For Digital Divide Communities…..……28

C. Delegate Authority To The Universal Service Fund Administration To Explore Forming A Digital Equity Fund For Small Manufacturers.……. 28

D. Continue Regulatory Flexibility And Economic Analysis For Rulemaking Proceedings, Mergers And Acquisitions, And Other Business Opportunities...29

E. Refer M1B's Market Trial Application To The FCC Office of Engineering For Consultations On The Acquisition Of A Commercial Market Trial License…30

CONCLUSION…….……..31

APPENDICES……...…32

EXECUTIVE SUMMARY

The Mile One Broadband Consortium ("M1B") respectfully submits the following comments in the above styled docket to address a remedial issue pertaining to the litigation in *Martin v. U.S.*, Civil Action No. 23-cv-2758, (D.D.C. pending motion to alter and amend dismissal on January 27, 2025). The comments that follow fall within the FCC's Primary Regulatory Jurisdiction and discretion under 47 U.S.C. 151, et seq.[1]

M1B proposes rule optimization in three areas: the Executive Order on Free Speech (Appendix A), the Open Video Service Rule (Appendix B - 47 CFR § 76.1500-76.1501), the Consortium Exception Rule (Appendix C - 47 CFR 1.2110) and the Anti-DEI Bans.[2] As will be shown, each of these prime candidates for deregulation has features that could utilized more efficiently to avoid unduly restricting the mobility of market forces that are needed to rapidly bridge the digital divide in urban and rural areas as emerging innovative technologies come available.[3]

In the interest of optimal market outcomes, M1B offers detailed commentary relating to (a) guiding principles for administrative review in GN Docket 25-133; (b) major policy questions related to diversity, equity and inclusion issues in light of recent legal developments on FCC regulatory jurisdiction; (c) economic analysis of cost-benefit dynamics that contribute to "significant transformative innovation" for telecommunications development; and (d) use cases

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1 Acceptance of the filing of these comments on the first business day after the deadline is is respectfully requested.

2 See, Exec. Order No. 14,151, Ending Radical and Wasteful Government DEI Programs and Preferencing, Executive Order of January 20, 2025, 90 Fed. Reg. 8339, 8339 (Jan. 29, 2025) ("J20 Order"); Exec. Order No. 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, Executive Order of January 21, 2025, 90 Fed. Reg. 8633, 8634-35 (Jan. 31, 2025) ("J21 Order") (collectively, the "Orders" or "Challenged Orders") (emphasis added).

3 *City of Dallas v. FCC*, 118 F.3d 935 (5th Cir., 1997); but see, Botein, Michael (2006) "Open Video Systems: Too Much Regulation Too Late?," Federal Communications Law Journal: Vol. 58: Iss. 3, Article 5.

on for a market trial on "cap and trade spectrum commerce;" and (e) recommendations deregulatory optimization using the above described principles as vehicles for accomplishing universal service goals while also accelerating transformative innovation for geographically disadvantaged urban and rural communities that are affected by the digital divide disequilibria.

I. GUIDING PRINCIPLES OF REVIEW FOR GN DOCKET 25-133

M1B's comments revolve around the provisions of the Executive Order #14149 titled "Restoring Freedom of Speech and Ending Federal Censorship", January 20, 2025 ("EO #14149") (attesting to the constitutional norm that "[t]he First Amendment to the United States Constitution, an amendment essential to the success of our Republic, enshrines the right of the American people to speak freely in the public square without Government interference"). M1B also relies upon an Executive Order titled "Unleashing American Energy" (Executive Order January 20, 2025) (the "Innovation Policy Order").

M1B offers the following input and incorporates into it by reference the comments and reply comments of Mile One Broadband Consortium in FCC Docket #22-69.[4]

- ***Cost Benefit Considerations***: In law, "Transformative Innovation" and "Smart DEI" can reasonably be read to refer to a legitimate body of constitutionally and statutorily enumerated privileges and immunities for stakeholders at the intersection of the Progress Clause and Commerce Clause of Article I in the Federal Constitution. But in economics "Smart DEI" represents a business opportunity for Coasian Bargaining that has the potential to give the contracting parties a valuable optimization benefit that they would not otherwise have.

- ***FCC Experience With Spectrum Management Innovation.*** The U.S. early transition to competitive spectrum bidding in the late 20th century and the launching of spectrum sharing arrangements in the early 21st century are two of America's crowning achievements maintaining superiority on the international

[4] See comments and reply comments of Mile One Broadband Consortium in FCC Gen. Doc. 22-69 (advocating market-based efficiency measures and regulatory flexibility to bridge the digital divide). See, https://www.fcc.gov/ecfs/search/search-filings/filing/10101192987139. Plaintiff alsp filed comments for Mile One for "In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion" (GN Docket No. 20-269), https://docs.fcc.gov/public/attachments/fcc-21-18a1.pdf

stage. “Smart DEI” in this context should be valued in terms of global competitiveness benefits for U.S. Progress Clause stakeholders. Designated Entity participation enables robust U.S, stakeholder participation in global markets both large and small.[5]

- ***Market And Technological Change.*** The advances in the state of the art that the U.S. achieved in the Third Industrial Revolution provided the foundation for competitive spectrum bidding, shared spectrum arrangements, 5G Internet of Things innovations and more. The same tools that made these advances possible also make it possible to harness Designated Entity ingenuity to connect low income and disadvantaged households in urban and rural settings: software defined radio, THz Gap experimentation, modularization of micro-data center deployments, digital cloud network architectures and on-line trading of regulated crypto currencies. The indiscriminate suppression of DEI speech and association in this setting is counterproductive to long term economic growth for the Fourth Industrial Revolution.

- ***Structural Barriers To Market Entry***: The FCC should revisit its reliance on the Coase Theorem with a focus on eliminating excessively high transaction costs for market entry and counter-productive information asymmetries. Narrowing the scope of the Anti-DEI Bans to conform to conventional strict scrutiny analysis would lower the two major barriers identified by the Coase Theorem. To evaluate optimization alternatives in this setting, effective methods of economic analysis - preferably marginal utility analysis - will be especially valuable for long term GDP growth.

- ***Designated Entity Tax Certificates***. There are several promising ways to optimize industry utilization of Designated Entity intellectual property for the telecommunications marketplace as a means to produce robust multiplier benefits for society at large. Most notably, “Smart DEI” plans can potentially add value for multi-media conglomerate merger and acquisition applicants and similarly situated applicants for relaxation of cross-ownership restrictions. The FCC’s tax certificate program for capital gains deferrals has been inexplicably dormant for many years. This would be a good time to revisit and to repurpose the existing tax certification statute. See, 47 U.S.C. 309(j)(4)(D).

[5] In a recent Center for Strategic and International Studies (CSIS) study, for example, the authors argue that the leverage over technology, social media, and big data that China and Russia enjoy as tools in a global information war means that the United States must embrace a bold approach to public diplomacy in a setting where "Information is the currency of the new world order...", and entrepreneurial agility is a coveted asset. See, Refocusing U.S. Public Diplomacy for a Multipolar World," by Daniel F. Runde and Phillip Arceneaux, Center for Strategic and International Studies (CSIS), November 14, 2024.

Given the assessment presented above, M1B strongly recommends for the FCC to delete or otherwise relax any rule found to be inconsistent with the following mechanism design for transformative innovation in the national interest.

II. MAJOR POLICY QUESTIONS EXIST FOR FCC PRIMARY JURISDICTION

The major question arises from the legislative scheme in 47 U.S.C. 230, and the structural tension between Congress' textual commitment to "True Diversity" and the "Anti-DEI Ban" provisions of the Innovation Order. The conflict leads M1B to request for the FCC to consult with the Attorney General about Sec. 2(f) of the Innovation Order which states that " It is the policy of the United States: to safeguard the American people's freedom to choose from a variety of goods and appliances,... to promote market competition and innovation within the manufacturing and appliance industries." Section 2 (h) similarly "guarantee[s] that all executive departments and agencies (agencies) provide opportunity for public comment and rigorous, peer-reviewed scientific analysis." Lastly, Section 2(c) (i) states that policy is to provide: "notice of this Executive Order and any such actions to any court with jurisdiction over pending litigation in which such actions may be relevant."

M1B respectfully questions the constitutional validity of a broad reading of *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023), particularly in a manner that requires the FCC to eliminate economic analysis bearing on a neutrally defined, protected class of small business entities, also known as "designated entities." See 47 U.S.C. 309(j)(4)(D) (assigning the duty to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures." Id.

In the past, the Commission routinely issued economic status reports pursuant to its statutory obligation under 47 U.S.C. 151 to furnish notice and opportunity to be heard about whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. "The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." See, 47 U.S.C. 706.

In a recent press release unsupported by a notice and comment rulemaking proceeding, it was disclosed that the Commission's economic reports —including the FCC's Section 706 and its Communications Marketplace Reports— had "started to focus on the promotion of [Diversity, Equity and Inclusion], rather than hewing to the tasks laid out by Congress for those reports. Promoting DEI will no longer be any part of the FCC's Reports."

In fact, Section 151 describes the task at hand jurisdictionally by providing that "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges … for the purpose of promoting safety of life and property through the use of wire and radio communications, and for the purpose of securing a more effective execution of this policy by centralizing authority … There is created a commission to be known as the

"Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter." 47 U.S.C. 151.

Contrary to the legislative scheme upon which Congress has spoken, it is not clear how the FCC "shall execute and enforce the provisions of this chapter" if it glosses over congressional findings and casually modifies duties that the Congress previously mandated. In other words, it is not clear how the stated administrative reform can be reconciled consistently with the existing textual commitment to the jurisdictional framework specified in 47 U.S.C. 151. It is equally unclear how the administrative repeal of statutorily mandated rationale can be said to comport with the Executive Branch directive under Section 2 (h) of the Innovation Order, a provision that guarantees "that all executive departments and agencies (agencies) provide opportunity for public comment and rigorous, peer-reviewed scientific analysis."

The transcript of the oral argument in the *SFFA* case does not appear to support these changes and instead underscores the need for a more dynamic taxonomy as the foundation for public dialogue on the differences between DEI interests as characterized by different industry segments. For example, The *SFFA* transcript records a colloquy between Justice Clarence Thomas and counsel for Harvard's co-defendant, North Carolina University: "I've heard the word diversity a few times, and I don't have a clue about what it means."

Justice Thomas's disclaimer in the Harvard case can best be understood in the specific context of the briefings that the parties provided to the Supreme Court for that case. The disclaimer suggests a benign motive on the part of Justice Thomas – along with all the other justices - to elicit clarification from the parties about the operative meaning of the word "diversity" that they were asking the Court to rely upon in reaching its decision. The answer that counsel for University of North Carolina gave in response characterizes "diversity" in a way that

sheds light on its usage as an adjective to describe the practice of considering race based factors in a college admissions program. But the meaning that James Madison gave the same word in Federalist No. 10, and the concept in the report of his Progress Clause proposal to the Constitutional Convention, is considerably broader.

Madison wrote in Federalist #10 that the solution to factionalism is the maintenance of the diversity of interests among a large population that would prevent any single faction from gaining too much power. "The diversity in the faculties of men, from which the rights of property originate," he wrote, "is no less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first objective of the government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results..."

First, it is notable that the Supreme Court has decided at least three cases that explicitly validate references to the Diversity of Faculties Rationale of the Federalist #10, and thereby implicate Madison's argument in Federalist #10 that the Framers contemplated Progress Clause powers aligned with the Diversity of Faculties. A diligent search suggests that the Supreme Court cited Federalist #10 in the 20th century in *Storer v. Brown*, 415 U.S. 724, 736 (1974); apparently, while discussing a California law that forbade candidates from running as independents within one year of holding a partisan affiliation: "California apparently believes with the Founding Fathers that splintered parties and unrestrained factionalism may do significant damage to the fabric of government." Id. In *California Democratic Party v. Jones*, 530 U.S. 567 (June 26, 2000), the matter came before the court again, proimoting it to note that "the creators of the first American party system on both sides, Federalists and Republicans, were

men who looked upon parties as sores on the body politic," and that "Parties ranked high on the list of evils that the Constitution was designed to check."Id.

Finally, in *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 424 (January 24, 2000), Justice Clarence Thomas invoked Federalist No. 10 in a dissent against a majority ruling that supported limits on campaign contributions:

> As to controlling faction, James Madison explained, 'There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests ... It could never be more truly said than of the first remedy that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency."

Nixon, Id. (citing The Federalist No. 10, p. 78 (C. Rossiter ed. 1961)). Justice Thomas'dissent leaves no question about where he stands on the Federalist #10: "The Framers preferred a political system that harnessed such factions for good, preserving liberty while also ensuring good government. Rather than adopting [a] repressive 'cure' for faction … the Framers armed individual citizens with a remedy." (brackets added).

Based on the universal reliance of the *Storer, Jones* and *Nixon* decisions on Federalist #10, M1B construes the statement "the Framers armed individual citizens with a remedy" to mean that a private right of action exists to enforce the diversity powers that lie with the rubric of of Federalist #10. To be sure, the subject matter related to campaign finance and subject matter related to Internet Content Statute represent distinct applications of the Federalist #10 diversity rationale as to which "the Framers armed individual citizens with a remedy." Id.; *accord, Students Against Fair Admissions v. United States Of America,* Case 1:23-cv-02699-RDB

(December 6, 2024) ("*SFFA v. US*") (finding compelling governmental interest in officer corp diversity).

More recently, in *National Association of Diversity Officers in Higher Education et al v. Trump et al*, Case 25-1189) (4th Cir., February 21, 2025), Chief Judge Diaz joined two other panel members in granting an administrative stay on a nationwide injunction against the Anti-DEI Bans, but clearly endorsed limiting principles based on the concept of "True Diversity":

> And despite the vitriol now being heaped on DEI, people of good faith who work to promote diversity, equity, and inclusion deserve praise, not opprobrium. For when this country embraces true diversity, it acknowledges and respects the social identity of its people. When it fosters true equity, it opens opportunities and ensures a level playing field for all. And when its policies are truly inclusive, it creates an environment and culture where everyone is respected and valued. What could be more American than that? Under the most basic tenets of the First Amendment, there should be room for open discussion and principled debate about DEI programs, and whether its corresponding values should guide admissions, hiring, scholarship, funding, or workplace and Educational practices. And all Americans should be able to freely consider how to Continue empowering historically disadvantaged groups, while not "[r]educ[ing]" the Individuals within those groups "to an assigned racial [or sex-based] identity." For almost 250 years, this nation's North Star has been the self-evident truth, "that all men are created equal." The Declaration of Independence para. 2 (U.S. 1776).

Id. p. 4 - 6. M1B concurs with the assessment offered by Chief Judge Diaz: "From boardrooms to courtrooms to operating rooms to classrooms, previously marginalized Americans are thriving in spaces long closed to them. And we are the better for it. Yet despite this success—or because of it—we owe it to ourselves to continue forging conversations that may help us achieve that "more perfect Union." Id.

The concept of "Smart DEI" agrees with the reasoning of the concurring opinion by Judge Harris which similarly emphasized that, while the EOs themselves are narrow and apply only to conduct that violates existing anti-discrimination law, behavior that exceeds the outer perimeter of legal authority outside the scope of the Anti-DEI Bans, would present significant constitutional concerns. "… [M]y vote to grant the stay comes with a caveat. What the Orders

say on their face and how they are enforced are two different things. Agency enforcement actions that go beyond the Orders' narrow scope may well raise serious First Amendment and Due Process concerns, for the reasons cogently explained by the district court. Id. See *NADOHE v. Trump*, Id.

In accordance with strict scrutiny standards of review suggested by the Fourth Circuit panel, the FCC should take care to exercise due diligence to examine less restrictive alternatives with respect to the deletion of rules that uphold the Constitution, Laws and Treaties of the United States, including the following in particular: (1) The Federalist #10 "Diversity of Faculties" Rationale; (2) the Progress Clause; (3) the Commerce Clause; (4) the First and Tenth Amendments of the Bill of Rights; (4) the "True Diversity" Clause in the Internet Content Provider Statute, 47 U.S.C. 230; (5) the "Equity" clauses in the Communications Act as amended, 47 U.S.C. 151 and 309(j); (6) the "Inclusion" clauses from the Information Investment and Jobs Act, 47 U.S.C. 1754; and (7) Article 7 of the International Convention To Eliminate All Forms Of Racial Discrimination. See also, 42 USC 1981 and 1982.

In summary, a careful examination of the Federalist #10 cases reveals that there is no apparent conflict between the "diversity of faculties" rationale from cases decided between 1974 and 2000, and the prudential exceptions to the *Harvard* case which withheld judgment on diversity as in "eliminating racial discrimination," diversity as in "discretionary business judgment," and national security interests in diversity. Based on the latter exceptions, M1B advocates policy measures FCC consideration based on "Smart DEI" in accordance with the Madisonian tradition memorialized in Federalist #10.

III. ECONOMIC ASPECTS OF TRANSFORMATIVE INNOVATION

M1B is an interested party in the expansion of public choice with respect to deployment accommodations in connection with the expenditure of funds appropriated for the Infrastructure Investment and Jobs Act of 2021. Due to recent events stemming from the TikTok Information Wars, the government is a beneficiary of the market sector that M1B has targeted for entry. More broadly, small tech businesses will likely have a strong motivation to invest in social media platforms with wireless cybermedia functionality going forward to regain lost reach, as well as to avoid acquisition arrangements that are time-consuming and transaction cost--intensive going forward. The FCC is respectfully requested to notice the significant character of the work that the Mile One Broadband Consortium has accomplished to date.

Whereas the conventional wisdom offered to explain the digital divide holds that the major barrier is the existence of demand side cost barriers and computer illiteracy among the targeted digital divide populations, the lesser understood explanation for digital divide gaps is the cost structure for the technical and financial inputs that go into technological advances that are needed to close the gap. Support in information economics for a "cap and trade" ecosystem platform appears in Coase's 1974 article, "The Market for Goods and the Market for Ideas."

In the 1974 article, Coase presented the case for government regulation of markets for goods and against government regulation of the market for ideas, that gives purpose to the transition from command and control methods to market based methods:

> … in the market for goods, government regulation is desirable whereas, in the market for ideas, government regulation is undesirable and should be strictly limited. In the market for goods, the government is commonly regarded as competent to regulate ... monopolistic power and, in any case, without some form of government intervention, would not act in a way which promotes the public interest. In the market for ideas, the position is very different. The government ... would be inefficient and ... the results would be undesirable. Consumers, on the other hand, if left free, exercise a fine discrimination in ... views placed before them….

Id. When politics causes these functions to be confused, "the result is that government action is regarded as desirable to regulate (or even suppress) the expression of an opinion in an advertisement which, if expressed in a book or article, would be completely beyond the reach of government regulation." Id. The Coase Theorem supplies an established mode of analysis which shows that the proposed privilege and immunities are narrowly tailored to promote the goals of the True Diversity rationale in 47 U.S.C. 230.

The Coase Theorem[6] reveals that legacy approaches to directionality in technological innovation and telecommunications development, at a time of rapid socio-technological change, may lead to an inefficient allocation of economic resources for which the transformative innovation model is well suited to correct. [7] Similarly, suboptimal reliance on the asymmetrical provisioning arrangements of the incumbent regime conceals the benefit of less restrictive alternatives that could improve welfare for all market participants. An inefficient legacy regime for telecommunications regulation may also cloak the magnitude of the deadweight from the accumulated social opportunity costs.

Following Coase's lead, Congress authorized the FCC in 1993 to auction licenses for radio spectrum. See Omnibus Budget Reconciliation Act of 1993, Pub.L. No. 103-66, § 6002, 107 Stat. 312, 387-392 (codified at 47 U.S.C. § 309(j)(1)-(12) (1994)). It also amended the Communications Act in 1994 to require the FCC to "recover for the public a portion of the value

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[6] In law and economics, the Coase Theorem describes a transactional model for resource allocation, in this case spectrum resources and public infrastructure goods, in the presence of persistent economic externalities. The theorem holds that if the provision of a good or service results in an externality, and trade in that good or service is possible, then bargaining will lead to a Pareto efficient outcome regardless of the initial allocation of property rights. In practice, the workability of the theory depends on the information structure and outputs of the affected market, and low transaction costs for the acquisition of spectrum usage rights and for the deployment of network infrastructure components. See, *FCC v. NextWave Personal Communications Inc.*, 537 U.S. 293 (2003) (designated entity case enforcing 42 USC 309(j)(4)(d)).

[7] See, Coase, Ronald, "The Federal Communications Commission," 2 J.L. & ECON 1 (1959); Coase, Ronald (1960), "The Problem of Social Cost" J.L. & ECON 3; and the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66 (OBRA '93).

of the public spectrum resource" from pioneers [preference recipients], with provisions for installment payments over a five year period." See, Uruguay Round Agreements Act, Pub.L. No. 103-465, § 801, 108 Stat. 4809, 5050-51 ("URAA") (codified at 47 U.S.C. § 309(j)(13)(B) (C) (1994)); see also H.R. Rep. No. 103-826, pt. 2, at 26 (1994).

Spectrum auctions are used by governments to assign and price licenses forwireless communications. Effective auction design requires an bidding apparatus that leads to competition in the downstream market for wireless communications as well as the upstream market. When the FCC encountered challenges to the workability of its new competitive spectrum bidding regime, Congress eventually repealed FCC authority to award licenses for innovation without mutually exclusive applications. In the Citizens Broadband Radio Service, it is possible to run a facility-based ORAN operation using shared spectrum techniques, well within the scope of the rules for innovators that the FCC had in 1991.

The FCC issued those rules in an effort to reward, "an applicant demonstrating that it (or its predecessor-in-interest) has developed an innovative proposal that leads to the establishment of a service not currently provided or a substantial enhancement of an existing service," id. at 3494, and to ensure the applicant would "effectively . . . [be] guarantee[d] . . . a license in the new service (assuming it is otherwise qualified) by permitting the recipient of a pioneer's preference to file a license application without being subject to competing applications." Id. at 3492; see also 47 C.F.R. § 1.402(a) (1995); *Adams Telcom, Inc. v. FCC*, 38 F.3d 576, 578 (D.C. Cir. 1994).

Experience with this method has been mixed. On one hand, scholarly articles dispute that the FCC's designated entity program is wasteful, and show instead that the bidding preferences increased the government's revenue by more than 15 percent – an increase in total revenues of

more than $50 million. These authors emphasize that subsidizing DEs created extra competition in the auctions and induced the non-subsidized firms to bid higher.[8] Other studies caution that efficient auctions raise substantial revenues, but focus more on revenues likely distorts the outcome away from social welfare maximization. In some cases they worked well in promoting social welfare, but in other cases the result was lengthy delay in the use of the spectrum because of subsequent bankruptcy and litigation. "Our conclusion," the latter authors state, "is that these instruments must be used with care ... do no harm."

In the *Google v. Oracle*, the Supreme Court gave meaning to "do no harm" expectation when it ruled that a rival's use of an application programming interface (API) was "transformative" considering that the rival's presentation of a "new context" to create a "new platform" that enabled "creativity by third-parties." Id. Without disclosing inventive steps that might prejudice a future revival of involuntarily abandoned applications, it is enough to say that the business model for the proposed ecosystem for wireless cybermedia services supports an inference of transformative innovation as a factor bearing on eligibility for Progress Clause testimonial privilege. calls for a threshold assessment of costs and benefits calls to enable a platform for experimentation with measures to mitigate internet access disparities.

On the question of whether exogenous discrimination against a single target group (i.e. discrimination external to the intellectual property system under study) cause "holistic inefficiencies" and derivative losses that contribute to a progress deficit that harms a whole society, the emerging discipline of information economics identifies two frequent;y encountered

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[8] Ian Ayres, Peter Cramton, and William K. Townsend, "Pursuing Deficit Reduction Through Diversity: How Affirmative Action at the FCC Increased Auction Competition Pursuing Deficit Reduction Through Diversity: How Affirmative Action at the FCC Increased Competition." Available at: https://ianayres.yale.edu/pursuing-deficit-reduction-through-diversity-how-affirmative-action-fcc-increased-auction#:~:text=Pursuing%20Deficit%20Reduction,Deptartment%20of%20Economics.

market entry barriers: the information asymmetry associated with a lack of access to justice and the transaction costs associated with a lack of access to capital. Stratification economics - a subfield of the wider discipline of economics designed to improve economists' understanding of inter-group disparities. [9]

In one study, the author concluded that "Absence of the rule of law covaries with declines in patent productivity for white and black inventors, but this decline is significant only for African American inventors. Patenting responds positively to declines in violence. These findings imply that ethnic and political conflict may affect the level, direction, and quality of invention and economic growth over time."[10] To the extent that the occurrences of exogenous discrimination, and the withholding of protection for legal and institutional rights, diminishes the "level, direction, and quality of invention and economic growth over time" for everyone, such outcomes are deemed to restrict "holistic efficiency." M1B interprets this to mean that occurrences of exogenous discrimination, coupled with the withholding of protection for legal and institutional rights, ultimately diminishes the level, direction, and quality of invention and economic growth over time" for everyone.

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[9] Akcigit, Ufuk, John Grigsby, Tom Nicholas. 2017. "The Rise of American Ingenuity: Innovation and Inventors of the Golden Age" NBER Working Paper No. 23047; Sarada, Sarada, Michael J. Andrews, and Nicolas L. Ziebarth. "Changes in the demographics of American inventors, 1870–1940." Explorations in Economic History 74 (2019): 101275; Jonathan Rothwell, A Republic of Equals: A Manifesto for A Just Society (Princeton University Press, 2019). (Jonathan Rothwell's A Republic of Equals, concluded that educational achievement, innovation, and entrepreneurship were widespread in the North's Black community in the decades between the end of slavery and beginning of Jim Crow.); Jonathan Rothwell, Jose Lobo, Deborah Strumsky, and Mark Muro, "Patenting Prosperity: Invention and Economic Performance in the United States and its Metropolitan Areas" (Washington: Brookings Institution. 2013); and see also, Notice of Request for Information (RFI) to Make Access to the Innovation Ecosystem More Inclusive and Equitable, 87 Federal Register 33,786 (June 3, 2022).

[10] Cook, "Violence and economic activity: Evidence from African American patents, 1870-1940 June 2014, Journal of Economic Growth 19(2):221-257 DOI:10.1007/s10887-014-9102-z; see also, Mike Andrews and Jonathan Rothwell, "Reassessing the Contributions of African American Inventors to the Golden Age of Innovation" (SSRN Working Paper, 2020).

Others such as economist and nobel prize winner Michael Spence assessed the performance of deployment practices at the turn of the 21st century in his Nobel Prize lecture entitled "The Internet and the Changing Informational Structure of Markets":

> We know from the economics of information that there are periods in which enough has changed so that we operate in a data-free environment, that is, one in which there is temporarily little or no relevant data to constrain expectation. The data trickles in and the belief and expectations start to line up with reality again … [A]lmost everyone overestimated the speed with which individuals and organizations change their behavior, and we also underestimated the amount of difficult technical infrastructure that needed to be built in order to have the foreseen outcomes become a reality.``

Professor Spence notes three core variables that affected the diffusion of innovation and comparative rates of adoption: Moore's Law, Metcalfe's Law and the reductions in fiber optic noise to signal ratios that increase the payload of a digital transmission.[11]

The available economic evidence suggests that the interest of the federal government in Pareto efficiency usage of spectrum resources should compel it pursue a wide range of institutional arrangements for securing advances in the state of the art. See, *Freeman Engineering Associates v. FCC*, 103 F.3d 169, 180 (D.C. Cir. 1997); cf., *United States v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y.1943). In the *Freeman Engineering* case, the D.C. Circuit was satisfied that Omnipoint performed "significant new work" related to 2 GHz PCS after the FCC's adoption of the pioneer's preference rules. Id. (quoting Third Report and Order, 9 F.C.C.R. at 1346), leading the D.C. Circuit to conclude that even a qualifying "adaptation" could qualify as "significant new work" depending on the circumstances. See, *Google LLC v. Oracle America, Inc.*, 593 U.S. 1 (2021).

IV. TRANSFORMATIVE INNOVATION WITH NEUTRAL METHODS

[11] Spence, at p. 436-37.

In the text of the Internet Content Provider statute in Section 230, Congress spoke unambiguously with the finding that "[t]he rapidly developing array of Internet and other interactive computer services … offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops [and] a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity." 47 U.S.C. 230 (a) (1-5) (emphasis added). M1B's work in process implements the legislative scheme for the Telecommunications Act of 1996 and its "True Diversity" rationale in 47 U.S.C. 230, and as applied to factors that contribute to digital divide price barriers and scaling restraints, represents a bold new approach for removing unnecessary cost layers for transformative innovation in the Internet Content Provider marketplace.

At a time when cord-cutting and the maturation of internet advertising are accelerating, the wireless cybermedia concept holds that incumbents and other stakeholders of the 5G era benefit stand to benefit significantly from the value-adding effects of a "cap and trade" platform that is calculated to discover non-obvious use cases for digital divide communities, and applied experimentation with community based supply-side participation. The technical specifications for the intended proof of concept market trial apparatus are on file with the PTO. In a manner of speaking, the regulatory specification for a proof of concept market trial appears in M1B's FCC filing in FCC General Docket No. 22-69, including FCC comments, reply comments and a petition for administrative remedies.

The Supreme Court decision in *Matal v. Tam*, 582 U.S. 218 (2017) is useful as a case study for modeling paths for reducing transaction costs and information barriers during a transition to or from a command and control spectrum management system, to allow breathing

space for experimentation with alternative institutional arrangements. In *Tam*, the Supreme Court considered a federal law prohibiting registering trademarks that may disparage or bring into contempt or disrepute any persons. Applying the statute as enacted, the PTO rejected a trademark application for an Asian-American dance-rock band named the "Slants" because it found the mark may be disparaging to Asian Americans. The Supreme Court reversed the statutory disparagement provision as a violation of "a bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend." Id.

Tam exemplifies the modern preference for freedom of content moderation and algorithmic expression over punitive regulations to coerce and suppress speech based on factors related to the content of the speech or the identity of the speaker, and has salutary benefits as a mechanism design for facilitating the exchange of negative externalities according to Coase Theorem. The mechanism design for the innovations mimics the exchange of negative externalities in *Tam* decision as a model for multiplying the flow of positive regulatory and transactional externalities in all directions.

As a candidate economic platform for infrastructure diffusion and digital commerce, the sweeping terms of the FCC's Anti-DEI Ban - in its current iteration - would likely draw Coase's astonishment as one of the most counterproductive "pigouvian" taxes in history. The ban requires the attorney general to submit a report within 120 days (May 21, 2025) that includes a proposed strategic enforcement plan identifying, among other things, (i) key sectors of concern within each agency's jurisdiction, (ii) the most egregious and discriminatory DEI practitioners in each sector of concern, and (iii) a plan of specific steps or measures to deter DEI programs or principles (whether specifically denominated "DEI" or otherwise) that constitute illegal discrimination or preferences. Moreover, the Executive Order directs, "As a part of this plan,"

the guidance states, "each agency shall identify up to nine potential civil compliance investigations of publicly traded corporations, large non-profit corporations or associations, foundations with assets of 500 million dollars or more, State and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars."

The Anti-DEI Ban has overbroadly impacted enforcement in the state and local context. On January 23, 2025, for example, Texas Attorney General Ken Paxton and nine other state attorneys general warned several major financial institutions that DEI and environmental, social, and governance (ESG) commitments could lead to enforcement actions if they are found to violate state or federal laws. But see *Netchoice v Paxton*, Id. A common complaint is that the Anti-DEA Ban orders mandate broad measures by law enforcement but do not describe the types of initiatives that would plausibly violate a scheme where diversity powers are constitutionally and statutorily and doctrinally prescribed.

To make matters worse, recipients of federal government funding face scrutiny and potential prosecution under the False Claims Act (FCA), 31 U.S.C. §§ 3729 – 3733. The FCA provides that any person who knowingly submits, or causes to submit, false claims to the federal government is liable for three times the government's damages, plus penalties. To bring the Anti-DEI bans under the FCA, the Ban targets government funding recipients, contractors and subcontractors by prohibiting them from considering race, color, sex, sexual orientation, religion, or national origin in their employment, procurement, and contracting practices.

Further, every covered entity must execute a certification. Depending on the content of the certification and the presence of absence of novel consequences, the Department of Justice or private qui tam relators could conceivably charge an anecdotal DEI practitioner with an FCA case for a faulty certification theory. For "materiality" to be cognizable, however, compliance

with the provision must actually be material in fact to the government's decision to pay the claim or its decision to award the contract. See, *Universal Health Services, Inc. v. United States ex rel. Escobar,* 579 U.S. 176, 192 (2016).

M1B proposes deregulatory exceptions for the E.O. Ban regime based on a "Smart DEI" business model aligned with the framework of the Coase Theorem to accomplish deployment optimization and access disparity mitigation going forward. The idea is to create opportunity for value adding innovation to offset negative externalities of recent command and control measures. Based on critical cost-benefit considerations such as these, M1B also urges the Commission to use taxonomies in its public notices that are appropriately transparent so that industry stakeholders use them for Coasian bargaining to add maximum value to U.S. Progress Clause implementation efforts.

V. USE CASES FOR A CAP AND TRADE COMMERCIAL MARKET TRIAL

The concept of a "cap and trade" model to promote investments in spectrum commerce is modeled after the international market in carbon emissions, and aims to accomplish the following innovation objectives: (1) to inquire into the global state of the trade-off between intellectual property and internet access with a view to responding to relaxing economic constraints on broadband service consumption by low income domestic communities and international developing regions; (2) to identify scalable solutions for the mitigation of internet access disparities bearing on healthcare, public safety, food security, education, trade relations and access to essential municipal forums; and (3) evaluate the legal and policy implications of using Coasian Theorem bargaining strategies to optimize the exchange of factor commodities for the means of production in the identified areas of the global economy. Bhagwat, "Posner, Blackstone, and Prior Restraints on Speech, " 2015 BYU L. Rev. 1151 (2016) (market forces for

"intelligent intervention" for regulated entities requires "more information than governments are likely to have").

To incubate the envisioned regime, M1B proposes a proof of concept market trial on three identified use cases: a "cap and trade" cloud architectures for a "group shared access" spectrum sharing protocol; a "drag and drop" deployment process for accelerating deployments of wireless base station and node facilities by community development entities; and a "plug and provide" e-commerce platform for sustainable community based ecosystem development.

A. *Use Case #1: Testing Of A "Cap And Trade" Cloud For The CBRS/ ITU Band 48 (3.5 GHz)*.

Careful examination of the domestic public record reveals that the content of Plaintiff's significant patent-related works of creatorship are directly congruent with both the D. C. Circuit's innovation jurisprudence and with FCC proceedings such as the Further Notice of Proposed Rulemaking (FNPRM) for the 3.5 GHz spectrum band. To open up opportunities in these areas, the FCC's FNPRM for the 3.5 GHz band proposed in 2023 to allow Contained Access Users, such as hospitals, public safety organizations, and local governments to receive interference protection, akin to Priority Access licensees, within a limited portion of the GAA pool for indoor use within their own buildings, and to request up to 20 megahertz of reserved frequencies from the GAA pool for indoor use within their facilities. See 3.5 GHz FNPRM, 29 FCC Rcd at 4291-92, paras. 58-61. The Commission suggested that the limited geographic and spectral impact of CAF use would allow for effective coexistence of Contained Access Users, Incumbent Users, and other Citizens Broadband Radio Service operators. Id.[12]

[12] Reserved frequencies would be used only for private internal radio services and could not be made available to the general public. See 3.5 GHz FNPRM, 29 FCC Rcd at 4291-92, para. 60. Other GAA users would not be permitted to utilize the reserved frequencies within designated Contained Access Facilities (CAFs). Except for the ability to prohibit third-party use in CAFs, Contained Access Users utilizing reserved channels would still operate on a GAA basis and would have no special rights with respect to interference from Incumbent Users and other Citizens Broadband Radio Service users. Id.

B. Use Case #2: Testing Of A "Drag And Drop" Model For The Deployment Of Modular Micro-Data Centers For ORAN Mesh Network Architectures.

From an operational standpoint, the system for wireless cybermedia services offer the functional equivalent to an Open Radio Access Network ("OpenRAN") solution that is reasonably responsive to the operational needs that have been identified in the cybersecurity policy dialogue:

> The inclusion of OpenRAN solutions on the list of suggested replacements could produce benefits beyond the immediate goal of securing American communications networks. Such equipment is interoperable, uses open interfaces, is not reliant on a single equipment vendor, and is easily upgradeable to new applications and uses, including 5G OpenRAN, without the need to continually replace proprietary equipment or conduct additional tower climbs. Moreover, this equipment will help spur innovation and create more competition and diversity in the supply chain. It is prudent that we take full advantage of this moment …

Id. (emphasis added). See, Letter of Sen Marco Rubio to the FCC Chairman Ajit Pai, dated October 1, 2020 ("As the Federal Communications Commission (FCC) continues to implement the Secure and Trusted Communications Networks Act (the "Act"), we write to urge you to include OpenRAN and other solutions that adhere to open and interoperable standards ("OpenRAN solutions") on "the list of suggested replacements of both physical and virtual communications equipment, application and management software, and services" that the Act requires the FCC to develop…An explicit assurance to impacted carriers that they may select OpenRAN solutions to replace covered equipment … may also stretch federal dollars further, as OpenRAN offers the possibility of cost savings. ")

C. Use Case #3: Testing Of A Group Shared Access Protocol For "Plug And Provide" OVS-Based Distribution Of Internet Services Under 47 U.S.C. 230.

Because the value of the work in progress for global competitiveness can also be expressed as a function of the existing NIST supply chain diversity regulations, Plaintiff agrees

with now-Secretary of State Rubio's letter that it is prudent that we take full advantage of this moment:

> Diversifying the supply of systems, system components, and services can reduce the probability that adversaries will successfully identify and target the supply chain and can reduce the impact of a supply chain event or compromise. Identifying multiple suppliers for replacement components can reduce the probability that the replacement component will become unavailable. Employing a diverse set of developers or logistics service providers can reduce the impact of a natural disaster or other supply chain event. Organizations consider designing the system to include diverse materials and components.

NIST SP 800-53 Rev. 5 (Security and Privacy Controls for Information Systems and Organizations"). The "significant work" standard presents a method of "diversifying" and "identifying" wireless cybermedia suppliers that is consistent with NIST's goal of reducing "the probability that … replacement component[s] will become unavailable." "This leaves the intriguing question of where things go from here ... The [local exchanges] had no interest in ["Open Video Service"] hybrid status, and they clearly do not want to be regulated as cable operators. Perhaps there is another, fresh, innovative approach, but it does not seem to have surfaced so far." Botein, Id. In fact, M1B proposes five action steps to reverse counter-productive cost benefits dynamics of the Open Video Services regime.

- **Broadcast Network/Lower Power TV Mergers**. Skydance Media, LLC and its affiliates (Skydance), and National Amusements, Inc. (NAI) and its shareholders seek approval to transfer control from NAI's current shareholders to Skydance of the licenses and authorizations held by Paramount Global's subsidiaries. Paramount through subsidiaries holds 28 owned and operated local television broadcast stations of the CBS Television Network, as well as one Class A television broadcast station, and two low-power television translator stations. If the applications are approved, control of these

licenses will move from various trusts controlled by the former owners to companies owned and controlled by new owners.

- **Telecom Industry Vertical Acquisitions**. The acquisition of Verizon Communications Inc. (Verizon) of Frontier Communications Parent, Inc. (Frontier) is a potential beneficiary of M1B's market trial aspiration. Verizon provides communications services to consumers, businesses, government customers, and other carriers throughout the United States and internationally. Verizon subsidiaries include incumbent local exchange carrier (LEC) entities in ten states in the Eastern United States, and Verizon Wireless, which provides voice and data services across a nationwide wireless network. Frontier currently owns and operates more than 50 incumbent local exchange carriers (LECs) and a small number of competitive LECs in 25 states. A market trial is the optimal means of ascertaining the extent to which the holistic efficiencies of M1B's deployment model could optimize connectivity outcomes at the community level for cooperative community-based consumption of voice, video and data communications products and enhanced services.
- **Broadcast TV/5G Broadband TV Stations**. In February, three senators wrote to express concern about the recent actions to open or reopen investigations into broadcasting companies without any evidence of wrongdoing. Many are concerned by recent assertions that broadcast stations could be investigated over their editorial decision-making. Subsequently, a group of 73 members of the U.S. House of Representatives are calling for immediate action to update outdated ownership regulations that hurt local TV and radio stations. The emphasis is on the need for rules that reflect today's competitive media landscape, where local broadcasters face

unprecedented challenges from social media platforms. By modernizing these regulations with a path for Smart DEI commerce, the FCC can empower broadcasters to better serve their communities, promote local journalism, and compete in the modern media marketplace. Systems for wireless cybermedia services are a valuable component for the intended modernization.

- **Wireline Services Providers**. Comcast and its NBCUniversal subsidiary are under investigation regarding their diversity, equity, and inclusion programs. FOr example, Comcast states on its website that promoting DEI is “a core value of our business,” while other public reports state that Comcast has an entire “DEI infrastructure” that includes annual “DEI day[s],” “DEI training for company leaders,” and similar initiatives. To the extent that critical Progress Clause interests in research and development are at stake, it is not clear that constitutionally and statutorily enumerated rights will face the same level of scrutiny if the underlying concern is about "invidious forms of DEI in a manner that does not comply with FCC regulations.” Cost benefit data from a market trial could reveal that reduce the total cost of ownership, compared to rival offerings, represent a useful last mile component to increase densities in urban areas. Alphabet’s Google, Meta’s Facebook, and Amazon are also reorganizing diversity, equity and inclusion (DEI) initiatives.

VI. RECOMMENDATIONS FOR DEREGULATORY OPTIMIZATION.

A. Deregulate The Anti-DEI Ban With A “Smart DEI” Taxonomy To Achieve Optimal Infrastructure Diffusion With Maximum Holistic Efficiency.

M1B reads the evolving law on the Anti-DEI Ban to mean that consumers are signaling demand for DEI goods and services, and that a market trial for the system for wireless cybermedia services is a covered form of expression for purposes of the neutral principles of the

Free Speech Executive Order. See, *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) (content-based provisions of the 1996 Act violated the First Amendment's guarantee of freedom of speech). It appears that the Commission's criteria may be over-included for aggressive regulation and under-included for state of the art optimization.

To avoid confusion in the marketplace while reducing private sector vulnerability to discrimination claims for monetary damages, FCC regulatees are in need of guidance on the Commission's views with respect to the proper scope of Executive Branch authority as it relates to "True Diversity." The proposed terms of neutrality are consistent with the terms Justice Scalia applied in His opinion for the majority in *FCC v. Nextwave*. Justice Scalia emphasized strict adherence to the wording of statutes that codify enumerated rights. This factor, coupled with the fact that Congress had not provided any exceptions for regulatory motives in the Internet Content Provider context, supplies a strong indicator that a Smart DEI platform would likely to pass constitutional muster based on Madison's reasoning in Federalist #10. *Nixon*, Id. [13]

B. Refarm The "Open Video Service" Regime To Promote "Open Radio Access Network" Deployments For Digital Divide Communities.

M1B applauds the dynamic efforts that have been made by the Commission, its staff, and its advisory committee community, to bring about an apparatus for eliminating digital discrimination in the broadband marketplace. Subject to measures to contain transaction costs and information asymmetries such as those associated with the Anti-DEI Bans, it appears that the market disequilibrium that constrains public and private efforts to bridge the digital divide is

[13] In *Adarand Constructors, Inc. v. Peña*, 515 U. S. 200, 227 (1995), the Supreme Court overruled the standard of review is had earlier applied in *Metro Broadcasting, Inc. v. FCC*, 497 U. S. 547, 566–568 (1990). Whereas it had previously upheld race-conscious "minority ownership policies" because they were "substantially related to the achievement of . . . broadcast diversity —i.e., viewpoint diversity, the holding in Adarand means that strict scrutiny for "all racial classifications" is now required. Beyond that, Adarand is not controlling on matters that lie within the statutorily delegated sphere of the FCC's regulatory mission. Smart DEI a narrowly tailored to further diversity of ownership

more likely to evolve toward Pareto efficiency through a combination of market and enforcement mechanisms than with a command and control approach alone. In this regard, M1B respectfully submits that the benefits of a market mechanism in the form of an experimental platform for cap and trade spectrum commerce probably far outweigh the costs. Careful examination may reveal that intervening legal authority has overruled the wrongly decided circuit decision in *City of Dallas v. FCC*, 118 F.3d 935 (5th Cir., 1997).

C. Delegate Authority To The Universal Service Fund Administration To Explore Forming A Digital Equity Fund For Small Manufacturers.

The competitive advantage that the U.S. gains on the international stage from Designated Entity participation in manufacturing is substantial. "By 2040, the global demand for new infrastructure investment is $68 trillion." See, Palash Ghosh, "BlackRock CEO Larry Fink pledges to 'unlock' private markets in annual letter," Pensions and Investments, March 31, 2025. But side-by-side with market opportunity, there is also an apparent risk of future market failure which is also addressed by the wireless cybermedia business model:

> Today, many countries have twin, inverted economies: one where wealth builds on wealth; another where hardship builds on hardship. The divide has reshaped our politics, our policies, even our sense of what's possible … The solution isn't to abandon markets; it's to expand them [with] market democratization ... and let more people own a meaningful stake in the growth happening around them.

Id. Fortunately for U.S. stakeholders, the regulatory infrastructure for the emerging $68 trillion market is already in place by virtue of the diversity measures enumerated in 47 U.S.C. 151 and 203, the "equity" measures enumerated in 47 U.S.C. 309(j); and the "inclusion" measures as enumerated in 47 U.S.C. 1754(c).

D. Continue Regulatory Flexibility And Economic Analysis For Rulemaking Proceedings, Mergers And Acquisitions, And Other Business Opportunities

A conscientious approach to regulatory flexibility analysis will likely reveal that cap and trade investment models that lower the total cost of ownership for open radio access networks offer the best hope for the bridging of the digital divide. In the emerging 5G/6G landscape, there are huge transformative innovation benefits that flow from reducing the total cost of ownership for deploying open radio access networks.[14]

Though accurate data is scarce, one trade group estimates that typical per-household fiber deployment costs vary from a low of approximately $800 in a dense urban neighborhood up to $6,000 or more in a rural area. In extremely remote areas, this can be between $50,000 and $100,000 per-household. In contrast, Fixed Wireless Access (FWA) typically ranges from less than $200 to about $1,800 per-household, remaining relatively consistent across similarly situated diverse regions and topography.[15]

E. Refer M1B's Market Trial Application To The FCC Office of Engineering For Consultations On Acquisition Of A Commercial Market Trial License.

M1B has a proprietary interest in reviving and developing the methods specified in USPTO #63/577,251 and USPTO #13/026, 246. Consistent with the cap and trade investment model, the FCC is requested to lift the stay on M1B's initial 2020 market trial application, and to refer the petition to the Office of Engineering in connection with the FCC's Spectrum Opportunity Zone Policy. The platform under innovation is an open shared spectrum ecosystem

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[14] The system for wireless cybermedia services adds value to the market by improving the market entry efficiencies for an open radio access network paradigm with cost reduction features that promote the goal of maintaining diversity of ownership. In fact, the proposed relief is functionally congruent with at least three major FCC National security priorities: (1) reducing U.S. trade and supply chain dependencies on foreign adversaries; (2); mitigating cyber security vulnerabilities affecting digital divide communities and (3) ensuring U.S. success in the ongoing strategic technology competition and in ongoing 5G and 6G Innovations.

[15] Dr. Rikin Thakker, Fixed Wireless Access (FWA): A Competitive and Growing Broadband Technology Wireless Infrastructure Association (WIA) (Dec. 20, 2022).

for last mile Internet Content Provider connectivity. Wireless cybermedia innovations multiply value in any FCC regulated or USF administered market segment.

Under a designated entity forum framework for analysis, one that takes content-based restraints into account, the FCCs anti-DEI gambit carries a serious risk of disruption and delay for American information consumers. Out of an abundance of caution to protect consumers from future market failures, M1B advocates using neutral measures to implement the Executive Order on Free Speech. Provided that the FCC anti-diversity ban is deregulated, Smart DEI trade relations will likely surge from the reduction in risks.

CONCLUSION

M1B offers five basic policy recommendations for consideration which are framed, with neutral principles, to experiment with transformative innovation, holistic efficiency and cap and trade spectrum commerce using narrowly tailored accommodations for Smart DEI.

Dated: April 14, 2024

Respectfully Submitted,

s/ Rowland J. Martin
Rowland J. Martin
For Mile One Broadband Consortium
951 Lombrano St.
San Antonio, Texas, 78207

APPENDIX A:

RESTORING FREEDOM OF SPEECH AND ENDING FEDERAL CENSORSHIP

The White House
January 20, 2025

By the authority vested in me as President by the Constitution and the laws of the United States of America, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Purpose. The First Amendment to the United States Constitution, an amendment essential to the success of our Republic, enshrines the right of the American people to speak freely in the public square without Government interference about significant matters of public debate.... Government censorship of speech is intolerable in a free society.

Sec. 2. Policy. It is the policy of the United States to: (a) secure the right of the American people to engage in constitutionally protected speech;

(b) ensure that no Federal Government officer, employee, or agent engages in or facilitates any conduct that would unconstitutionally abridge the free speech of any American citizen;

(c) ensure that no taxpayer resources are used to engage in or facilitate any conduct that would unconstitutionally abridge the free speech of any American citizen; and

(d) identify and take appropriate action to correct past misconduct by the Federal Government related to censorship of protected speech.

Sec. 3. Ending Censorship of Protected Speech. (a) No Federal department, agency, entity, officer, employee, or agent may act or use any Federal resources in a manner contrary to section 2 of this order.

(b) The Attorney General, in consultation with the heads of executive departments and agencies, shall investigate the activities of the Federal Government over the last 4 years that are inconsistent with the purposes and policies of this order and prepare a report to be submitted to the President, through the Deputy Chief of Staff for Policy, with recommendations for appropriate remedial actions to be taken based on the findings of the report.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE

January 20, 2025.

APPENDIX B:
47 CFR § 76.1500-76.1501 - Open Video Service Rules

§ 76.1500 Definitions.

(a) Open video system. A facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple"subscribers within a community, provided that the Commission has certified that such system complies with this part.

(b) Open video system operator (operator). Any person or group of persons who provides cable service over an open video system and directly or through one or more affiliates owns a significant interest in such open video system, or otherwise controls or is responsible for the management and operation of such an open video system.

(c) Video programming provider. Any person or group of persons who has the right under the copyright laws to select and contract for carriage of specific video programming on an open video system.

(d) Activated channels. This term shall have the same meaning as provided in the cable television rules, 47 CFR 76.5(nn).

(e) Shared channel. Any channel that carries video programming that is selected by more than one video programming provider and offered to subscribers.

(f) Cable service. This term shall have the same meaning as provided in the cable television rules, 47 CFR 76.5(ff).

(g) Affiliated. For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(h) Attributable Interest. The term “attributable interest” shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(i) Other terms. Unless otherwise expressly stated, words not defined in this part shall be given their meaning as used in Title 47 of the United States Code, as amended, and, if not defined therein, their meaning as used in Part 47 of the Code of Federal Regulations"

§ 76.1501 Qualifications to be an open video system operator.

Any person may obtain a certification to operate an open video system pursuant to Section 653(a)(1) of the Communications Act, 47 U.S.C. 573(a)(1), except that an operator of a cable system may not obtain such certification within its cable service area unless it is subject to "effective competition" as defined in Section 623(l)(1) of the Communications Act, 47 U.S.C. 543(l)(1). The effective competition requirement of the preceding sentence does not apply to a local exchange carrier that is also a cable operator that seeks open video system certification within its cable service area. A cable operator that is not subject to effective competition within its cable service area may file a petition with the Commission, seeking a finding that particular circumstances exist that make it consistent with the public interest, convenience, and necessity to allow the operator to convert its cable system to an open video system. Nothing herein shall be construed to affect the terms of any franchising agreement or other contractual agreement.

APPENDIX C:
47 CFR 1.2110 - DESIGNATED ENTITY CONSORTIUM EXCEPTIONS

1.2110 Designated entities.

(a) Designated entities are small businesses (including businesses owned by members of minority groups and/or women), rural telephone companies, and eligible rural service providers.

(b) Eligibility for small business and entrepreneur provisions —

(1) Size attribution.

(i) The gross revenues of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules. An applicant seeking status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules, must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous three years of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests.

(ii) If applicable, pursuant to § 24.709 of this chapter, the total assets of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as an entrepreneur. An applicant seeking status as an entrepreneur must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous two years of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests.

(2) Aggregation of affiliate interests. Persons or entities that hold interests in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(c)(5)(iii) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

Example 1 to paragraph (b)(2): ABC Corp. is owned by individuals, A, B and C, each having an equal one-third voting interest in ABC Corp. A and B together, with two-thirds of the stock have the power to control ABC Corp. and have an identity of interest. If A&B invest in DE Corp., a

broadband PCS applicant for block C, A and B's separate interests in DE Corp. must be aggregated because A and B are to be treated as one person or entity.

Example 2 to paragraph (b)(2): ABC Corp. has subsidiary BC Corp., of which it holds a controlling 51 percent of the stock. If ABC Corp. and BC Corp., both invest in DE Corp., their separate interests in DE Corp. must be aggregated because ABC Corp. and BC Corp. are affiliates of each other.

(3) Standard for evaluating eligibility for small business benefits. To be eligible for small business benefits:

(i) An applicant must meet the applicable small business size standard in paragraphs (b)(1) and (2) of this section, and

(ii) Must retain de jure and de facto control over the spectrum associated with the license(s) for which it seeks small business benefits. An applicant or licensee may lose eligibility for size-based benefits for one or more licenses without losing general eligibility for size-based benefits so long as it retains de jure and de facto control of its overall business.

(4) Exceptions —

(i) Consortium. Where an applicant to participate in bidding for Commission licenses or permits is a consortium of entities eligible for size-based bidding credits and/or closed bidding based on gross revenues and/or total assets, the gross revenues and/or total assets of each consortium member shall not be aggregated. Where an applicant to participate in bidding for Commission licenses or permits is a consortium of entities eligible for rural service provider bidding credits pursuant to paragraph (f)(4) of this section, the subscribers of each consortium member shall not be aggregated. Each consortium member must constitute a separate and distinct legal entity to qualify for this exception. Consortia that are winning bidders using this exception must comply with the requirements of § 1.2107(g) of this chapter as a condition of license grant